

Doris M. FRANKLIN v. STATE of Arkansas

CACR05-1008

Supreme Court of Arkansas
Opinion delivered May 11, 2006

MOTIONS – MOTION FOR BELATED APPEAL GRANTED.— There was not good reason for failure to perfect the appeal where appellant’s attorney stated in the belated-appeal motion that the notice of appeal inadvertently failed to include reference to the order denying the motion for new trial.

Appellant’s Motion for Belated Appeal Regarding Posttrial Motion; granted.

Dunham & Faught, P.A., by: *James Dunham*, for appellant.

No response.

PER CURIAM. Appellant Doris M. Franklin, by and through her attorney, has filed a motion for a belated appeal of her posttrial motion. Her attorney, James Dunham, states in the belated-appeal motion that the notice of appeal inadvertently failed to include reference to the order denying the motion for new trial.

This court clarified its treatment of motions for rule on clerk and motions for belated appeals in *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004). There we said that there are only two possible reasons for an appeal not being timely perfected: either the party or attorney filing the appeal is at fault, or there is “good reason.” 356 Ark. at 116, 146

S.W.3d at 891. We explained:

Where an appeal is not timely perfected, either the party or attorney filing the appeal is at fault, or there is good reason that the appeal was not timely perfected. The party or attorney filing the appeal is therefore faced with two options. First, where the party or attorney filing the appeal is at fault, fault should be admitted by affidavit filed with the motion or in the motion itself. There is no advantage in declining to admit fault where fault exists. Second, where the party or attorney believes that there is good reason the appeal was not perfected, the case for good reason can be made in the motion, and this court will decide whether good reason is present.

Id., 146 S.W.3d at 891 (footnote omitted). While this court no longer requires an affidavit admitting fault before we will consider the motion, we find in this case that there was not good reason for failure to perfect the appeal.

The motion is granted. A copy of this opinion will be forwarded to the Professional Conduct Committee.

Motion granted.